

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment - Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: May 4, 2007

Signature: 

1744

Docket No.: BECTON 3.0-019  
(PATENT)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Patent Application of:  
Bachur et al.

Application No.: 09/892,061

Group Art Unit: 1744

Filed: June 26, 2001

Examiner: W. H. Beisner

For: SYSTEM AND METHOD FOR OPTICALLY  
MONITORING THE CONCENTRATION OF  
A GAS, OR THE PRESSURE, IN A  
SAMPLE VIAL TO DETECT SAMPLE  
GROWTH

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This communication is in response to the Office Action mailed April 4, 2007, setting forth a Restriction Requirement in the above-identified application. In the Office Action, the Examiner required restriction to one of the following inventions under 35 U.S.C. §121:

I. Claims 65, 67, 68, 79-89, 91, 92 and 96-99, drawn to a microorganism detection system including a laser, classified in class 435, subclass 288.7.

II. Claims 113-122, drawn to a microorganism detection system including a plurality of lasers and detector, classified in class 435, subclass 288.7.

III. Claims 123-132, drawn to a microorganism detection system including a mounting bracket, classified in class 435, subclass 288.7.

IV. Claims 133-140, drawn to a microorganism detection system including a module with a movable interior portion, classified in class 435, subclass 288.7.

V. Claims 141-145, drawn to a microorganism

detection system including a rail and slide, classified in class 435, subclass 288.7.

In response, Applicants hereby elect the invention of Group II, corresponding to claims 113-122. Applicants reserve the right to file a divisional application corresponding to the non-elected claims. The Examiner also issued a species election requirement with regard to Groups I-IV. The Examiner stated that each laser emitting at a single wavelength was a patentably distinct species. The Examiner also stated that no claim is generic.

In a conference call with the Examiner on May 3, 2007, applicants' attorney noted that claim 113 recites a plurality of lasers, each of which emits at a substantially single wavelength and wherein at least one laser emits radiation at a wavelength that is different from at least one other laser. As such, claim 113 is not limited to one laser emitting at a single wavelength. Consequently, applicants submit that claim 113 is generic and is not susceptible to the required species election since it contemplates a plurality of lasers emitting at different wavelengths. The Examiner appreciated this fact and agreed that applicants are not required to elect a species if Group II was elected in response to the restriction requirement. The Examiner is thanked for his helpful resolution of this matter.

In the event any fee is due in connection with the present response, the Examiner is authorized to charge Applicant's Deposit Account No. 12-1095 therefor.

Dated: May 4, 2007

Respectfully submitted,

By   
Richard J. Botos  
Registration No.: 32,016  
LERNER, DAVID, LITTBENBERG,  
KRMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicant